

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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JUN 12 1997

Federal Communications Commission
Office of Secretary

In The Matter Of)
)
Implementation of Section 25)
Of the Cable Television Consumer)
Protection and Competition Act)
Of 1992)
)
Digital Broadcast Satellite)
Public Service Obligations)

MM Docket No. 93-25,

To The Commission:

**SUPPLEMENT TO REPLY COMMENTS OF
BLACK ENTERTAINMENT TELEVISION**

Black Entertainment Television ("BET"), by its attorneys, hereby submits this Supplement to its Reply Comments, filed May 30, 1997. Below, BET has set out the following information: (1) the page on which the change appears; (2) the original text; and (3) the correction made by BET. All deletions are surrounded in brackets ([]) and all corrections to the text are underlined.


<u>Page No.</u>	<u>Comments</u>	<u>Correction</u>
4	"public service obligation not violate . . ."	"public service obligation <u>definition</u> not violate . . ."
4	"The 'public service uses' should include . . ."	" <u>Specifically</u> , the 'public services uses' should include . . ."
6	"BET provides public affair programming . . ."	"BET provides public affairs programming . . ."
7	"BET urges the Commission to allow American art form niche interests . . ."	"BET urges the Commission to allow American art form niche <u>program</u> interests . . ."

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| 7 | " . . . to satisfy the DBS public service requirement." | " . . . to satisfy the DBS public <u>'informational programming'</u> service requirement." |
| 7 | "Informational programs about jazz are particularly interesting and imparting knowledge of the music genre is . . . " | "Informational programs about jazz are particularly interesting and imparting knowledge of [the] <u>this</u> music genre is . . . " |
| 7 | "Representative Conyers . . . has introduced legislation to designate jazz as a rare and valuable national treasure, which stated that: . . . " | "Representative Conyers . . . has introduced legislation to designate jazz as a rare and valuable national treasure[, which stated that]:" |
| 10 | " . . . offer minority-oriented programming of an educational nature. In forming its public service standards pursuant to Section 25 of the Act . . . " | " . . . offer minority-oriented programming of an <u>informational and</u> educational nature. In forming its public service <u>obligation</u> standards pursuant to Section 25 of the <u>1992 Cable</u> Act . . . " |

BET also attaches to this Supplement a revised version of BET's Reply Comments, incorporating the changes mentioned above.

Respectfully submitted,

BLACK ENTERTAINMENT TELEVISION

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June 12, 1997

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To The Commission:

**REPLY COMMENTS OF
BLACK ENTERTAINMENT TELEVISION**

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INTRODUCTION

Black Entertainment Television ("BET"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding, which seeks to implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act").^{1/} Section 25 directs the Commission to promulgate regulations requiring direct broadcast satellite ("DBS") services to carry a minimum amount of non-commercial educational or informational programming. BET concurs with commenters who submitted that the Commission should adopt a flexible approach that includes commercial programmers' offerings among "public service uses" that meet the public service obligations under Section 25. In addition, the Commission should adopt a public service uses requirement that allows programming geared toward diverse minority and ethnic groups to satisfy DBS public service obligations. Finally, BET submits that its informational program services that support national art forms should be qualified as public service programming for purposes of the DBS public service obligations.

I. The Commission Should Adopt A Flexible Approach To Implementation Of Section 25's Public Interest Programming Requirements So As To Include Programming From Diverse Sources.

During the last several years, the Commission has consistently advocated flexible, marketplace solutions as the means of meeting public policy expectations.^{2/} This is consistent

^{1/} BET is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET On *Jazz*, Action Pay-Per-View and BET Movies/STARZ³. BET has also partnered with Microsoft to develop on-line programming and interactive software products for African-American consumers.

^{2/} For example, in order to meet their public service requirements to ascertain and address significant community problems, needs and interests, the Commission has long given over-the-air broadcasters considerable flexibility and deference, in reliance on their good

with, *inter alia*, the Congress' intent that communications policy stress flexible, means of addressing communications issues.^{3/} Such an approach is especially appropriate to the DBS public interest requirements.

BET supports the comments of parties such as DirecTV that the class of programmers and types of programming used to fulfill DBS obligations should be broadly construed. BET concurs with Comments submitted by Encore Media Corporation ("EMC"), that private companies should be included in the pool of programmers who meet DBS public interest obligations. Several commenters agreed that certain already-existing programs should be considered to fulfill the public service requirements.^{4/} In particular, Primestar urged the Commission to consider the Learning Channel, the Discovery Channel, Animal Planet "and other services." BET agrees, and adds that utilizing already-existing educational and informational programming would be a cost-effective and efficient means to implement the public interest obligations, and would encourage the commercial development of informational programming without rigid categorization that might otherwise stifle innovative programming.

In particular, the Commission should allow DBS operators to count towards the public interest benchmarks the considerable informational, public affairs and news offerings of commercial programmers that serve minority community needs and interests. As set forth in greater detail below, the current paucity of such programming ignores a substantial public need. Inclusion of such programming in DBS public service requirements will spur additional

faith judgment, to ascertain community problems and interests and present programming that addresses them. Deregulation of Radio, 104 FCC 2d 505, 506-7 (1984).

^{3/} Conference Report on Telecommunications Act of 1996, S. Report 104-230, p. 1.

^{4/} See e.g. Comments from Primestar, L.P. ("Primestar"); American Sky Broadcasting, L.L.C. ("ASkyB"); DirecTV, Inc. ("DirecTV"); Tempo Satellite, Inc. ("Tempo").

opportunities for programming to address the problems, needs and interests of America's minority communities.^{5/} Further, the Commission should also be mindful that its DBS public service obligation definition not violate Section 257 of the Telecommunications Act, 47 U.S.C. §257, by erecting market entry barriers for minority-owned businesses.

II. DBS Public Service Obligations Should Be Fulfilled By Programming Meeting a "Public Service Uses" Test.

DBS providers' public interest obligations should be fulfilled by carrying programming that meets the "public service uses" test set forth in the House Report to the Act. Specifically, the "public service uses" should include programming produced by :

. . . (3) any entity to serve the **disparate needs of specific communities of interest, including linguistically distinct groups, minority and ethnic groups,** and other groups.^{6/}

The Senate Report contains an identical definition of "public services uses."^{7/}

^{5/} BET is such a commercial programmer that already devotes substantial programming time to airing public affairs and informational programming addressed to the African-American community that should count towards the public interest programming obligation. For example, *BET News*, which appears weekly on Friday evenings at 6:30 PM EST is the only weekly, nationally-viewed news television program devoted to highlighting national and international events affecting African-Americans. This and other public affairs, news and informational programming on BET is precisely the type of individual programming offered by commercial programmers that should count towards meeting DBS public interest obligations. See Exhibit 1 for a fuller discussion of the BET Cable Network.

^{6/} Notice of Proposed Rulemaking In the Matter of Implementation of Section 25 of the Cable Television Consumer Act of 1992 Direct Broadcasting Satellite Public Service Obligations, MM Docket No. 93-25, (the "NPRM") at 1589. (citing House Report at 124) (emphasis added). The other two categories are: (1) telecommunications entities, including programming furnished to such entities by independent production services and (2) public or private educational institutions, or entities for educational, instructional or cultural purposes.

^{7/} Senate Report, Cable Television Consumer Act, P.L. 102-385 at 1225.

The Commission's adoption of a "public service uses" test would ensure diversity in programming carried by DBS providers. Adoption of the "public service uses" test would also ensure that the Commission meets its Section 307(b) mandate to ensure that licenses and frequencies (and their attendant obligations to serve the public) are distributed in a fair, efficient, and equitable manner.^{8/} Commission precedent supports adoption of a "public service uses" test, as the Commission has promoted diversity of ownership and programming since it began regulating broadcasting.^{9/}

Recent massive consolidation of ownership of media outlets has threatened diversity of media ownership and programming.^{10/} This, in turn, threatens the First Amendment principle

^{8/} "[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b).

^{9/} A fundamental purpose of Commission regulation of broadcasting for nearly 50 years has been "to promote diversification of ownership in order to maximize diversification of program and service viewpoints." Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations (Report and Order), 18 FCC 288, 291 (1953). See also Turner Broadcasting System, Inc. v. FCC, 117 S.Ct. 1174, 1204 (1997) ("assuring that the public has access to a multiplicity of informational sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.")

^{10/} For a detailed description of recent consolidation in media ownership, see Comments of BET, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150 and related proceedings, (filed February 10, 1997); see also Comments of Media Access Project at 5 in the same proceeding (filed February 7, 1997). The Comments of the National Association of Black Owned Broadcasters ("NABOB") indicated that FCC action permitting further consolidation in the television market would have a deleterious effect upon minority-owned television stations. See Comments of the National Association of Black-Owned Broadcasters ("NABOB"), Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150 at 13.

that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." Associated Press v. United States, 326 U.S. 1, 20 (1945).

As noted in the court decision upholding public service uses for DBS providers, "Section 25 of the Act is 'a reasonable means of promoting the public interest in diversified mass communications.'"^{11/} The Commission can restore some diversity in programming by adopting the "public service uses" test for DBS providers. "After all, a proliferation of [media] outlets will be worth little if regulatory changes permit them to be held in fewer and fewer hands."^{12/}

Special attention to minority-programming, attention which the House, Senate and the Commission all recognized as significant, should be incorporated into the rules implementing Section 25. According to U.S. Commerce Department minority ownership statistics, minority ownership of television stations stagnates at 2.2% for African Americans, .74% for Hispanics, .08% for Asians and 0% for Native Americans.^{13/} Along with broadcasting, DBS has a responsibility to its viewers to reflect the diverse interests and viewpoints of all Americans.

BET serves minority programming interests. BET provides informational programming to the African-American community. For instance, BET provides public affairs programming, such as Lead Stories, BET News, Our Voices and BET Talk. It also provides African-American

^{11/} Time Warner Entertainment v. FCC, 93 F.3d 957, 969 (D.C. Cir. 1996).

^{12/} Comments of The Honorable Larry Irving, Assistant Secretary for Communications and Information, United States Department of Commerce, Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150 (filed May 22, 1997).

^{13/} Minority Commercial Broadcast Ownership in the United States, The Minority Telecommunications Development Program, National Telecommunications and Information Administration, United States Department of Commerce, April, 1996.

youth-oriented programming in Teen Summit, which covers such issues as teen pregnancy, community activism, health, and academic success.^{14/}

III. Public Interest Uses Should Include Programming That Serves National Informational Purposes, Such As The Art Education Function Performed By BET On Jazz.

BET submits that the phrase "educational and informational programming" should be defined broadly enough to include important areas of the American artistic heritage. One niche interest-area which should fall well within any definition adopted is the area of American music education. All varieties of American art forms should be deliberately included in any definition of "informational," so as to ensure that the "public service uses" of the DBS spectrum are fully utilized.

Television programming provides a particularly well-suited medium for music education. The programming can provide lectures on various music forms and terminology. This understanding is augmented by listening to and watching musicians play instruments. BET urges the Commission to allow American art form niche program interests, such as television programming geared toward music information and education, to satisfy the DBS public service "informational programming" requirement.

Music instruction should be included in any complete package of education resources. Informational programs about jazz are particularly interesting and imparting knowledge of this music genre is a valuable public service. Jazz is a uniquely American music form. In fact, Representative Conyers (D-MI) has introduced legislation to designate jazz as a rare and valuable national treasure:

^{14/} See Exhibit 1.

[J]azz has achieved preeminence throughout the world as an indigenous American music and art form, bringing this country and the world a uniquely American synthesis and culture through the African-American experience. . .

[I]t is important for the youth of American to recognize and understand jazz as a significant part of their cultural and intellectual heritage . . .

[R]ecent research has proven the positive cognitive impact of jazz education and appreciation on childhood development . . . ^{15/}

Congressman Conyers previously introduced similar legislation.^{16/}

Further, several jazz artists have been congressionally recognized for their contributions to American art.^{17/} Additionally, Senator Bennet Johnson (D-LA) introduced legislation to designate 1995 at the "Jazz Centennial Year."^{18/} In so proposing, the legislation stated that "jazz is the most widely recognized indigenous art form in the United States and was designated as a rare and valuable national treasure by the Congress in 1987."^{19/} Jazz has also been recognized on a scholarly basis as a uniquely American art form.^{20/} "In one recent year, the National Endowment for the Arts gave seventy-one jazz fellowships for a total of \$450,000 and gave another fifty-four institutional grants in jazz for \$742,500."^{21/}

Jazz began as a fusion of blues, rag-time and folk-music, primarily performed by African-Americans in the 1920s.^{22/} Different forms of jazz emerged from New Orleans, Chicago,

^{15/} H. Con. Res. 57.

^{16/} H. Con. Res. 396, introduced on September 25, 1986.

^{17/} See, e.g., H. J. Res. 15 introduced on January 5, 1993 by Representative Conyers, Joint Resolution to Provide for the Issuance of a Commemorative Postage Stamp in Honor of Louis "Satchmo" Armstrong; H. R. 141 introduced on January 5, 1993 by Representative Conyers, A Bill to Award a Congressional Gold Medal to John Birks "Dizzy" Gillespie.

^{18/} H. J. R. 380, introduced on June 17, 1994; S. J. Res. 182, introduces on April 20, 1994.

^{19/} Id.

^{20/} Jazz: The American Theme Song, James Lincoln Collier, Oxford University Press, (1993).

^{21/} Id. at 145.

^{22/} The Jazz Book: From Ragtime to Fusion and Beyond, Joachim E. Berendt, Lawrence Hill

and New York City, making the music a distinctly American phenomena, complete with regional influences.^{23/} Some of the major jazz artists, including Louis Armstrong, Benny Goodman, Dizzy Gillespie, Ella Fitzgerald, Duke Ellington, Miles Davis and Billie Holiday, are some of the most prominent American names around the globe. Jazz has changed and grown in the seventy years since its inception, and is still produced today. Jazz, big-band and swing (both of which emerged from jazz) are three of the major artistic contributions that America has made globally. BET On *Jazz*, by educating America about this unique heritage, offers an excellent informational and educational opportunity which should be included in the public service channel line-up of DBS operators.

BET On *Jazz* offers programming featuring many of the finest names in jazz, including in-studio performances, documentaries, concert coverage and celebrity interviews.^{24/} BET On *Jazz* is owned by BET, a media-entertainment company that provides quality programming targeted towards the African-American audience. BET On *Jazz* should qualify as a program that meets DBS public interest obligations.

Books (1989).

^{23/} See Exhibit 2.

^{24/} See Exhibit 2.

CONCLUSION

BET and BET On *Jazz* offer minority-oriented programming of an informational and educational nature. In forming its public service obligation standards pursuant to Section 25 of the 1992 Cable Act, the Commission should recognize the insights and value offered by BET, and the artistic education opportunities presented by BET On *Jazz*.

Respectfully submitted,

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